



THE UNIVERSITY *of* EDINBURGH

Edinburgh Research Explorer

Laws against laws

Citation for published version:

Canevaro, M 2018, Laws against laws: The Athenian ideology of legislation. in C Carey, I Giannadaki & B Griffith-Williams (eds), *Use and Abuse of Law in Athenian Courts*. Mnemosyne, Supplements, vol. 419, Brill, Leiden, pp. 271-292. https://doi.org/10.1163/9789004377899_017

Digital Object Identifier (DOI):

[10.1163/9789004377899_017](https://doi.org/10.1163/9789004377899_017)

Link:

[Link to publication record in Edinburgh Research Explorer](#)

Document Version:

Peer reviewed version

Published In:

Use and Abuse of Law in Athenian Courts

General rights

Copyright for the publications made accessible via the Edinburgh Research Explorer is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The University of Edinburgh has made every reasonable effort to ensure that Edinburgh Research Explorer content complies with UK legislation. If you believe that the public display of this file breaches copyright please contact openaccess@ed.ac.uk providing details, and we will remove access to the work immediately and investigate your claim.



Laws Against Laws: the Athenian Ideology of Legislation

Mirko Canevaro (The University of Edinburgh)

Introduction

A seminal moment of the heated debate on the reconstruction of Athenian fourth-century *nomothesia* was the publication in 1975 of MacDowell's 'Law-Making at Athens in the Fourth Century B.C.'.¹ MacDowell analysed systematically all the extant evidence and proposed an articulation of fourth-century *nomothesia* in separate procedures all in turn supplemented at various points throughout the fourth century. His conclusions have not ultimately withstood scrutiny, but his focus on reconstructing precisely the relevant procedures and institutions has been upheld in later studies by Hansen, Rhodes, Piérart and myself.² Among MacDowell's contentions, one that was immediately, and rightly, criticized by Hansen and Rhodes is that the statements at Dem. 20.91-2 describe a New Legislation Law that replaced an Old one: Demosthenes states that as long as the Athenians observed the original Solonian laws on *nomothesia* they did not enact new laws, but when powerful politicians made it possible for themselves to pass laws whenever and however they wanted, contradictions started arising among the laws, and laws no longer differed from decrees, and often were more recent than the decrees.³ Diodorus at Dem. 24.142 makes similar remarks and complains that *rhetoires* legislate almost every month, repeal the laws of Solon and replace them with their own.

Both Hansen and Rhodes pointed out that these passages, rather than describing a specific law, blame malpractices and procedural infractions that are allegedly current when politicians without scruples enact new legislation. In Rhodes' words, 'Lept. and Tim. are only two years apart, and the irregularities which Demosthenes alleges in them are very similar'. Both Leptines and Timocrates 'failed to comply with a παλαιός νόμος which requires action at a specified time, advance publicity for the new proposal, concurrent repeal of any law with which the new proposal conflicts'.⁴ Moreover, these claims are exaggerated and largely unjustified: Demosthenes claims that with the old law on legislation the Athenians did not enact new laws, yet we have epigraphical evidence of laws enacted before 355.⁵ He claims that clever politicians enact laws whenever and however they want, yet Leptines' law had in fact been enacted by the *nomothetai* according to the παλαιός νόμος, as Demosthenes admits at 20.94, and Leptines' law was repealed at the trial, which is evidence that if the appropriate procedure was not followed, the infractions were later

¹ MacDowell 1975. Before MacDowell, particularly influential works were Schöll 1886, Kahrstedt 1938, Atkinson 1939.

² Hansen 1979-80; 1985; Rhodes 1985; 2003; Piérart 2000; Canevaro 2013b; 2015; 2016.

³ MacDowell 1975: 65, 73 and *passim*; cf. also MacDowell 2009: 156-66. *Contra* Hansen 1979-80: 88-95, Rhodes 1984: 56, Canevaro 2013b: 241.

⁴ Rhodes 1985: 56. See also Hansen 1979-80: 88-95.

⁵ Fourth-century laws in chronological order are SEG 26.72; Stroud (1998); Agora Excavations, inv. no. I 7495 (unpublished); IG II² 140; IG II² 244; IG II³ 320; IG II³ 447; IG II³ 445. Cf. also Clinton (2005-8) no. 138; (2008) 116; SEG 52.104. The first five are earlier than these speeches. The document at Dem. 24.63 preserves a law earlier than these speeches, and should be reliable, cf. Canevaro 2013a: 151-7.

sanctioned in court.⁶ As for the charges that *nomoi* are indistinguishable from *psephismata*, and that the Athenians legislated too much, Hansen has convincingly shown that the distinction (procedural and substantive) between laws and decrees was upheld all the way down to 322, and the evidence shows that decrees were much more frequently enacted than laws.⁷

If the statements at Dem. 20.91-2 and 24.142 are not descriptions of actual institutional arrangements, they must be read as rhetorical statements about current illegal practices, statements to which the orator expected the audience to respond sympathetically, because they reflected shared attitudes to the law, inscribed into an ideology of legislation that could be successfully exploited in court. This line of enquiry has been less popular among scholars than strictly institutional and legal reconstructions, but a few works have attempted to tackle it: Hansen's, Thomas' and Wohl's discussions have isolated important features of fourth-century discourse on legislation, and highlighted the reliance on the figure of the lawgiver, Solon, in order to confer authority to the laws on the basis of their antiquity. They have also argued that, even in the fourth century, in order to be acceptable, innovations in the laws had to be described as a return to the *πάτριοι νόμοι*.⁸ These features seem to be evidence of a conservative ideology of legislation, which relies on the antiquity of the laws and on the authority of Solon the lawgiver as the foundations of the legal system,⁹ which is ideally characterized by absolute fixity and permanence, and refuses, and is threatened by, any change. Such an ideology of legislation seems to be in complete opposition to any recognition of popular sovereignty, and Thomas has gone so far as to describe it as 'non-democratic' and 'somewhat Spartan'.¹⁰

Of course, if we accept such a description of the fourth-century ideology of legislation, we need also to accept that the discourse of legislation was fundamentally divorced from, and antithetical to, the procedures and institutions for enacting new laws and changing the existing ones. I have reconstructed the relevant procedures elsewhere,¹¹ and here is not the place to rehearse my arguments. It will suffice to say that the evidence shows clearly that these procedures were aimed at safeguarding the coherence of the laws, and their place as separate from matters of day-to-day administration. Laws were marked as higher rules that must be scrutinized more carefully and extensively, and enacted in a different and more complex manner. At the same time, the fourth-century procedures of *nomothesia* are very clear and effective rules of change that formally allow the *demos* to introduce new laws and change the existing ones, and provide a venue for it, relying on democratic institutions like the popular lawcourts to secure their implementation. Moreover, they show a concern with publicity and accountability that is very democratic in tone.¹²

This is very inconsistent with the discourse of legislation as it has been reconstructed in recent studies,¹³ with its concern with the immutability and permanence of the laws and its apparent mistrust for popular sovereignty. Yet such a

⁶ Cf. Harris 2008: 20-1 and Kremmydas 2012: 58-69.

⁷ Cf. Hansen 1978, 1979 (*pace* e.g. Banfi 2011: 59-69, who takes instead Demosthenes' criticisms at face value).

⁸ Hansen 1989; Thomas 1994; Wohl 2010: 287-301. Cf. Johnstone 1999: 25-33.

⁹ Cf. Giannadaki, pp. 000-00.

¹⁰ Thomas 1994: 124, 128-31, 32.

¹¹ Canevaro 2013b.

¹² See in particular Canevaro 2015 and Canevaro 2013a: 158-60 Cf. Sickinger 2008.

¹³ See the references at n. 8.

discrepancy is difficult to account for, and we would expect it to hamper the workings of legislation, to make laws liable to accusations of illegitimacy, and to give rise to widespread mistrust for their provisions. We would expect legislative institutions that contradict so radically the shared ideology of legislation to be ultimately unworkable, and to undergo significant changes throughout the fourth century. Yet this is not the case. Hansen has shown that in the fourth century the procedural and substantive distinctions between *nomoi* and *psephismata* were carefully respected, and general permanent rules were invariably enacted by the *nomothetai* as laws.¹⁴ He has also shown that laws preserved on stone are significantly fewer than decrees (we have now ten laws, published or unpublished, and over 800 decrees from the fourth century¹⁵). On the other hand, these laws on stone, and several more attested in the literary record, show that legal change happened, and new legislation was regularly enacted. Dem. 24.142, a passage in which Diodorus accuses the Athenians of legislating too much, states that the Athenians summoned *nomothetai* almost once a prytany, that is, almost ten times a year. If we halve this figure to allow for rhetorical exaggeration, we are still left with 5 sessions of *nomothetai* a year, each probably dealing with several bills. Yet despite the regular enactment of new legislation, the orators invariably show great respect for the laws, and often state that the laws are the foundation of anything good happening to the city (e.g. Lyc. 1.4, Dem. 25.20-4; Dem. 24.5). We never find any argument which resembles Aristotle's suggestion at *Rhet.* 1.15.1375a5 that, when the law does not support one's case, one should oppose the law of nature to the laws of the city and criticize them because they change too often.¹⁶ The laws of Athens, within the boundaries of legal discourse and public life, command universal respect throughout the fourth century, and legal change has no negative effect on their authority. Moreover, no serious dysfunction in the procedure of *nomothesia* emerges from the epigraphical record – the procedures worked steadily for around eighty years, securing the distinction between *nomoi* and *psephismata*, and were repealed only in 322 with the Macedonian domination. The only change appears to be the institution at some point in the fourth century of special commissioners (Dem. 20.91) elected to inspect the existing laws and find contradictions.¹⁷ This addition, rather than witnessing the instability of the system, shows that the only reform deemed necessary was one whose purpose was to reinforce the checks against inconsistent laws, which were already built into the original *nomothesia* procedure.

It is then difficult to believe that the discourse about legislation exploited in the courts could be so antagonistic to the principles underpinning the actual legislative institutions. Recent work in institutional analysis, and in particular what have been termed 'ideational historical institutionalism' and 'discursive institutionalism', has stressed the importance of shared and coherent institutional ideologies for the success and duration of an institution.¹⁸ My purpose in this chapter is to reassess what the

¹⁴ Hansen 1978, 1979: with the reform of the late-fifth century *nomoi* were general permanent rules enacted by the *nomothetai*, while *psephismata* were *ad hoc* decisions whose application was limited in time, enacted by the Assembly or the Council (cf. Canevaro 2015).

¹⁵ Lambert 2012: 57 n. 31.

¹⁶ Cf. Carey 1996: 36-8; Harris 2006: 162-4.

¹⁷ Aeschin. 3.38-9 attributes the same task to the *thesmothetai*, see MacDowell 1975: 72, Rhodes 1985: 60, Hansen 1985: 356.

¹⁸ Cf. e.g. Smith 2006; Lieberman 2002; Schmidt 2008; 2010; 2011.

orators (and more specifically Demosthenes) have to say about legal change and its consequences, and explain, from an ideological point of view, the stability of the legislative procedures throughout the fourth century. The two main texts I will employ are Demosthenes' *Against Timocrates* and *Against Leptines*, both speeches written for γραφαὶ νόμον μὴ ἐπιτήδειον θεῖναι and whose purpose was to repeal laws enacted through *nomothesia*.

What makes a law bad? Ideological justifications for *nomothesia* norms

Diodorus in the *Against Timocrates* goes systematically about the task of demonstrating that the law of Timocrates is not ἐπιτήδειος. This law allowed public debtors condemned to the additional penalty of imprisonment until they paid back their debts to avoid prison if they could provide sureties. Diodorus claims that it enacted with the specific aim of saving Androtion, Glaucetes and Melanopus from prison. At §§15-16 Diodorus anticipates two of the main issues he will discuss: when the law was passed, and the fact that it was enacted avoiding publicity, almost secretly. In the next few paragraphs he goes into more detail about the arrangement of his argument against the law, and therefore about its illegalities. He announces at §17-18 that he will speak first of the laws that permit γραφαὶ νόμον μὴ ἐπιτήδειον θεῖναι, that is about the laws setting the rules for passing new legislation, and then he will discuss merits and problems of the law of Timocrates itself. In Diodorus' summary, the law on legislation provides a precise timescale for the enactment of new laws, publicity of the bills in front of the monument of the Eponymous Heroes, it prescribes that laws should apply to all citizens equally, and that any existing laws that contradict it must be first repealed. Diodorus mentions that there are also other provisions, but these are the main ones. Timocrates has allegedly sinned in all these respects, and therefore Diodorus will have to proceed systematically and discuss his infractions one by one. First, Timocrates has not respected the correct times to enact legislation, thus his legislation was not enacted according to the correct procedures. Second, he has failed to give his proposal adequate publicity. The next two infractions are substantive: third, the law of Timocrates fails to apply equally to all Athenians, and fourth, it contradicts existing laws that Timocrates has failed to repeal.

At §19 Diodorus announces that he will deal systematically with all these aspects. From §20 to 31 the topic is procedure; from §32 to 38 the law forbidding the enactment of a new law that contradicts existing ones without repealing them first; from §39 to 67, after the speaker has the law of Timocrates read out, we find a series of contradictory statutes read and discussed (among these, at §59, Diodorus discusses the law about *leges ad hominem*). Following this long discussion of the grounds on which the law of Timocrates is illegal, Demosthenes argues that it is also harmful for the city.¹⁹ The arrangement of the speech, at least in its first part, follows closely the

¹⁹ Quass 1971: 27, Rubinstein 2000: 42-3 n. 48 and Kremmydas 2012: 49 all correctly show that arguments about illegality and expediency were equally relevant to both γραφαὶ νόμων μὴ ἐπιτήδειον θεῖναι and γραφαὶ παρανόμων, regardless of the names of the procedures. *Contra* Wolff 1970: 13-14, 60-4 argues that only legal argument were relevant, whereas Hansen 1974: 71-2, 1987: 71-2 believes that political arguments were sufficient, without a real need to prove the illegality. According to Yunis 1988: 364-70 both lines of argument were essential for winning the charge. The evidence of the speeches shows that inconsistency with existing laws and with the spirit of the laws was essential, and legal arguments came always first in

issues covered by the laws on *nomothesia*: procedures (that distinguish the enactment of laws from that of *psephismata*), publicity and contradictory statutes. The accusation, as should be expected, is grounded on a close reading of the relevant laws. The accuser had to quote in the plaint the laws on which he founded his prosecution, as well as those that contradicted the law he wanted to repeal.²⁰ Yet Diodorus' legal argument is not drily adherent to the technicalities of the relevant laws, but rather full of ideologically charged statements that justify the provisions of these laws, and damn the law of Timocrates. These statements draw a nuanced picture of an ideology of legal change that is consistent with the relevant Athenian institutions and underpins them.

Diodorus, paraphrases the law on *nomothesia* at §24 after the secretary reads it out,²¹ and then at §27 has the decree of Epicrates that summons the *nomothetai* read out to show that it infringes upon all the rules just read and discussed.²² The list of these infringements at §26 is instructive: proposals for new laws must be published before the monument of the Eponymous Heroes for everyone to see and make up their mind,²³ yet Timocrates has not published his proposal, nor has he allowed the Athenians the chance to consider it. Moreover, he did not respect the 'times' prescribed by the law (τῶν τεταγμένων χρόνων).²⁴ The main issues with the law of Timocrates, on the procedural side, are the lack of publicity for the proposal, and the failure to enact it following the correct timetable. These are not just technical objections. The rationale of the relevant provisions is important and stressed by Diodorus. Advance publicity is key because 'if [one] notices anything against your interests, he may point it out and speaks against it at his convenience' (κἂν ἀσύμφορον ὑμῖν κατίδη τι, φράση καὶ κατὰ σχολὴν ἀντείπη; cf. Dem. 20.94 ἴν' ἕκαστος ὑμῶν ἀκούσας πολλάκις καὶ κατὰ σχολὴν σκεψάμενος, ἂν ἦ καὶ δίκαια καὶ συμφέροντα, ταῦτα νομοθετῇ; 'so that each of you may hear the laws many times and have a chance to study them at leisure and enact those that were just and in the public interest'). And respecting the prescribed timescale is key to allow the people enough time to examine the proposals and if necessary to oppose them. In fact, Diodorus (§36-7) lists the advocates of the old laws, the advance publicity of proposals, the time before the enactment and the possibility of bringing γραφαὶ νόμων μὴ ἐπιτήδειον θεῖναι as the key checks to guarantee that no bad legislation (that is, contradicting other laws) is enacted. In the *Against Leptines* Demosthenes stresses repeatedly that he and Phormion abided by the correct procedures, and contrasts their behaviour with Leptines' failure to respect the rules of *nomothesia*. In this case, Demosthenes does not go into detail about Leptines' infractions, presumably because Leptines, unlike Timocrates, had indeed followed the correct procedures, as Demosthenes has to admit at §94.²⁵ Demosthenes therefore makes

these speeches (see Wolff 1970: 13-14, 60-4). Moreover, the inclusion of the inconsistent laws in the plaint was compulsory in γραφαὶ παρὰ νόμων, and presumably also in γραφαὶ νόμων μὴ ἐπιτήδειον θεῖναι (see n. 20).

²⁰ Aeschin. 3.200 with Harris 2013: 121-2.

²¹ Canevaro 2013b: 139-50 for Demosthenes' account of the law.

²² The document found in the speech which purports to be the decree of Epicrates is an unreliable later forgery, see Canevaro 2013a: 104-12.

²³ On the use and significance of the expression 'for everyone to see', which usually (like in this case) refers to publicity of temporary records, cf. Hedrick 2000: 331-3.

²⁴ On this timescale see Canevaro 2013b: 146-7.

²⁵ See Canevaro 2016: 000-00.

general arguments about the importance of these procedures, giving the impression that Leptines has not followed them without having to provide evidence for it. At §90 he states:

οὐ γὰρ ὤφειτο δεῖν ὁ Σόλων, ὁ τοῦτον τὸν τρόπον προστάξας νομοθετεῖν, τοὺς μὲν θεσμοθέτας τοὺς ἐπὶ τοὺς νόμους κληρουμένους δις δοκιμασθέντας ἄρχειν, ἐν τε τῇ βουλῇ καὶ παρ' ὑμῖν ἐν τῷ δικαστηρίῳ, τοὺς δὲ νόμους αὐτούς, καθ' οὓς καὶ τούτοις ἄρχειν καὶ πᾶσι τοῖς ἄλλοις πολιτεύεσθαι προσήκει, ἐπὶ καιροῦ τεθέντας, ὅπως ἔτυχον, μὴ δοκιμασθέντας κυρίουσιν εἶναι.

Solon, who set up this method of enacting laws, did not think it right for the Thesmothetae, who are chosen by lot to administer the laws, to take office after two examinations, in the Council and before you in court, but for the laws themselves, which these men and all citizens are obliged to follow in their public actions, to be passed haphazardly and go into effect without having been examined.

To sum up, a law, in order to be good, must be different from a decree, must undergo multiple checks, must not be enacted on the spur of the moment and in haste, and in order to make sure that this is the case, following the correct procedure is essential. A new law is good if it is enacted following scrupulously the procedure of *nomothesia*, while it is doomed to be bad if enacted in defiance of it.

The other key issue for a new law is its consistency with the existing laws, the topic of the whole section Dem. 24.32-67. Diodorus states that in addition to not respecting the set times and not giving advance publicity to his proposal, Timocrates committed another crime: to introduce his law in violation of all the existing laws. At §33 the relevant law, prescribing that one must repeal all contradictory laws before enacting a new one and threatening a γραφή νόμον μὴ ἐπιτήδειον θείναι if one fails to do so, is read out, and afterwards Diodorus explains in detail the rationale and the qualities of these provisions (§34-5): because the judges have sworn to vote in accordance with the laws, if there existed contradictory laws, favouring both litigants, that are equally valid, it would be impossible for them to honour their oath. A similar rationale is given at Dem. 20.93, where Demosthenes states that 'contradictory laws are repealed so that there is one law on each matter, so that private individuals, who would be at a disadvantage in comparison to people who are familiar with all the laws, do not get confused, but points of law are the same for all to read as well as simple and clear to understand' (λύοντα τοὺς ἐναντίους, ἵν' εἷς ἡ περὶ τῶν ὄντων ἐκάστου νόμος, καὶ μὴ τοὺς ιδιώτας αὐτὸ τοῦτο ταράττη καὶ ποιῇ τῶν ἅπαντας εἰδόντων τοὺς νόμους ἔλαττον ἔχειν, ἀλλὰ πᾶσιν ἡ ταῦτ' ἀναγνῶναι καὶ μαθεῖν ἀπλᾶ καὶ σαφῆ τὰ δίκαια). Such a rationale is not just generically flagged up in trials concerning the enactment of new laws. The coherence of the legal system and consistency of the laws is affirmed and rhetorically exploited elsewhere, and informs the interpretation and presentation of statutes relevant to various cases.²⁶

²⁶ E.g. Aeschin. 3.37-40 argues that, because there are procedures in place to ensure that inconsistent laws are spotted and blocked, it is impossible for two contradictory laws about the awarding of crowns to be valid at the same time, and therefore one law quoted by Demosthenes in support of his case must be irrelevant to the present case. See Sickinger 2008 on the practice of eliminating disagreements among

At Dem. 24.39 Diodorus has the law of Timocrates read out, and then discusses a series of seven laws that allegedly contradict it yet have not been repealed by Timocrates.²⁷ The section is interspersed with statements about how inconsistent Timocrates' law is with these statutes: 'Consider then how much the law that this man enacted is contrary to this law' (§44, τούτῳ μέντοι τῷ νόμῳ σκέψασθ' ὡς ἐναντίος ἐστὶν ὃν οὗτος τέθηκεν), 'Timocrates immediately begins his law by contradicting this rule' (§55, Τιμοκράτης τοίνυν [...] εὐθὺς ἀρχόμενος τοῦ νόμου τάναντί' ἔθηκε τούτοις), 'Anyone could cite many excellent laws, all of which the law enacted by this man contradicts' (§61, πολλοὺς δ' ἂν τις ἔχοι νόμους ἔτι καὶ καλῶς ἔχοντας δεικνύναι, οἷς πᾶσιν ἐναντίος ἐστὶν ὃν οὗτος τέθηκεν). Some of the laws presented by Demosthenes as contradictory in fact are not, and the arguments of Diodorus are clearly unacceptable. To give only one example, the law at §50 forbids convicted wrongdoers to make any supplication in the Council or the Assembly, and anyone else to make supplications on their behalf. Diodorus explains the alleged intent of the lawgiver: as the Athenians are too gentle and would be moved by the misfortunes of convicted wrongdoers to accept their supplications and cancel their debts, the lawgiver passed a law that forbade such supplications. As begging, that is, making a supplication, is better than giving orders, and enacting a law equates to giving orders, then *a fortiori* Timocrates has ordered through his law to save Androtion, a convicted wrongdoer, when the law would not even allow begging on his behalf. The argument is specious, because the law is concerned specifically with supplications, not with enacting new laws.²⁸ On the other hand, some of the other laws discussed do contradict Timocrates': at §63 Diodorus quotes another law of Timocrates that prescribes that if someone, following an *eisangelia*, is convicted to pay a fine, he must stay in prison until the fine is paid. The law of Timocrates indicted by Diodorus allows instead anyone to escape prison if he offers sureties for his debt. These laws are not only contradictory, but they have both been enacted by Timocrates, who has therefore contradicted himself.²⁹

It is interesting however that Demosthenes/Diodorus should choose to mention a series of statutes as contradictory, despite the fact that many of his arguments can be proved wrong, while he could have as easily stuck to one or two that are actually inconsistent, and this would have sufficed to prove that Timocrates had failed to repeal the contradictory laws. The reason for such a list is that the orators understand the importance of the coherence of the laws on two levels: one level is that of actual contradictory provisions with specific statutes, the other, that of consistency with the overall aims and spirit of the laws, that is with the legal system as a whole. Because of this, proving that the indicted law contradicts specific provisions of other laws is as important as proving that it contradicts and virtually invalidates all the laws of the city, and their spirit and overall aim. Demosthenes, in his two speeches against laws, makes such claims very often. At Dem. 24.1 Diodorus states that Timocrates has enacted a law *παρὰ πάντα τοὺς νόμους*. At §5 that the judges have to decide 'whether all the other laws that you have enacted against men who harm the state are

statutes, e.g. destroying contradictory inscriptions (*pace* Lanni 2006: 115-48), and Harris 2013: 246-73 on the use of precedents to inform consistent interpretation of statutes. Johnstone 1999: 28-9 and Wohl 2010: 287-92 also stress that fourth-century Athenians saw their laws as a coherent and rational whole.

²⁷ Cf. on this section of the speech Canevaro 2013a: 113-56.

²⁸ Canevaro 2013a: 133-5.

²⁹ Canevaro 2013a: 152.

to be repealed while this one is to remain valid, or this one is to be repealed while the others are to remain valid' (πότερον δεῖ τοὺς μὲν ἄλλους νόμους, οὓς ἐπὶ τοῖς ἀδικοῦσι τὴν πόλιν ὑμεῖς ἀνεγράψατε, ἀκύρους εἶναι, τόνδε δὲ κύριον, ἢ τοῦναντίον τοῦτον μὲν λύσαι, κατὰ χώραν δὲ μένειν τοὺς ἄλλους ἑάν). At §38, just before the law of Timocrates is read out and contrasted with seven contradictory statutes, Diodorus states: '[Timocrates] has introduced a law that contradicts, one might say, all those now valid. He did not read out anything, repeal anything...' (νόμον εἰσήνεγκεν ἅπασιν ἐναντίον, ὥς ἔπος εἰπεῖν, τοῖς οὖσιν, οὐ παραναγνούς, οὐ λύσας...). At §61 he reiterates that 'Anyone could cite many excellent laws, all of which the law enacted by this man contradicts' [...] it will be liable to the charge even if it contradicts just one of the existing laws' (§61, πολλοὺς δ' ἂν τις ἔχοι νόμους ἔτι καὶ καλῶς ἔχοντας δεικνύναι, οἷς πᾶσιν ἐναντίος ἐστὶν ὃν οὗτος τέθηκεν [...] ὑμῖν δ' ὁμοίως ἔνοχος φανεῖται τῇ γραφῇ, καὶ εἰ ἐνὶ τῶν ὄντων νόμων ἐναντίος ἐστίν). Demosthenes is aware that some of his examples are weak, and stresses that one single contradictory statute would be enough, but the impression he is seeking to give is clear: the whole legal system is at odds with Timocrates' law. At §66 Diodorus summarizes this point: 'I think it is clear to all of you that he has enacted his law in violation both of these laws and of those discussed earlier, in fact, I could almost say in violation of all the laws of the city' (ὅτι μὲν τοίνυν καὶ παρὰ τούτους τοὺς νόμους καὶ παρὰ τοὺς προειρημένους, καὶ μικροῦ δέω παρὰ πάντας εἰπεῖν τοὺς ὄντας ἐν τῇ πόλει, τέθηκε τὸν νόμον, οἶμαι δῆλον ἅπασιν ὑμῖν εἶναι).³⁰

As a bad law is one that contradicts all the laws, it can destroy the city and its entire legal system. This is why Diodorus, later in the speech, after all the contradictions have been pointed out, can ask the judges whether the law of Timocrates is in fact a law or *ἀνομία*, that is the absence of laws (§152).³¹ He states that 'the law subverts the entire *politeia*, destroys political activity and deprives the city of many incentives for *philotimia*' (§91, ὅλην συγχεῖ τὴν πολιτείαν καὶ καταλύει πάντα τὰ πρᾶγμαθ' ὁ νόμος, καὶ πολλὰς φιλοτιμίας περαιορεῖται τῆς πόλεως). Diodorus goes so far as to represent at §§155-6 the very enactment of the law of Timocrates as a ruse to destroy all the existing laws. He attributes a similar argument to Solon himself, in an anachronistic re-enactment of a γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι brought by the ancient lawgiver (§213-14, cf. also Dem. 20.167):

δεῖν δὴ τοὺς δικαστὰς πολλῷ μᾶλλον, εἴ τις ὁ τῆς πόλεως ἐστὶ νόμισμα, τοῦτο διαφθείρει καὶ παρὰ νόμον εἰσφέρει, μισεῖν καὶ

³⁰ These passages show very clearly (*pace* Lanni 2009) that the γραφὴ νόμων μὴ ἐπιτήδειον θεῖναι is not exclusively or primarily concerned with securing the correctness of democratic procedure. The implication is rather that a bad law substantively contradicts the spirit of the laws of the city (and has been enacted only thanks to procedural infractions), and this must be shown by pointing to contradictions with individual statutes. The correctness of democratic procedure is only one of the aspects protected through safeguarding the integrity of the laws of the city.

³¹ *Pace* Wohl 2010: 292-301, who reads the reference to *anomia* as a hidden admission that the *nomothesia* procedure is intrinsically unstable and that any change to the laws can endanger the unity and coherence of the laws. It is only the introduction of a bad law, without following the correct procedures, that endangers the system, cf. Canevaro 2012: 442-3.

κολάζειν, ἢ εἴ τις ἐκεῖν' ὃ τῶν ιδιωτῶν ἐστίν. προσθεῖναι δὲ τεκμήριον τοῦ καὶ μείζον εἶναι τὰδίκημα, τὸ τοὺς νόμους διαφθείρειν ἢ τὸ ἀργύριον, ὅτι ἀργυρίῳ μὲν πολλαὶ τῶν πόλεων καὶ φανερώς πρὸς χαλκὸν καὶ μόλυβδον κεκραμένῳ χρώμεναι σφύζονται καὶ οὐδ' ὅτιοῦν παρὰ τοῦτο πάσχουσιν, νόμοις δὲ πονηροῖς χρώμενοι καὶ διαφθείρεσθαι τοὺς ὄντας ἐὼντες οὐδένες πώποτ' ἐσώθησαν.

Thus if someone debases the currency of the city and introduces a counterfeit coin, the judges ought to despise and punish him much more than if someone debased the currency of private citizens. He added, to prove that corrupting the laws is a worse crime than counterfeiting money, that although many cities clearly using coins mixed with bronze and lead have survived and suffered no harm at all, none of those that use bad laws and allow the destruction of existing laws has ever survived.

But stressing that a new law contradicts the existing laws is not the only method to prove that a law is inconsistent with the laws of the city. An orator can as effectively argue that it contradicts the spirit and the aims of the existing laws.³² Such arguments rely on an understanding of the laws as a coherent whole, predicated both, as we have seen, on the existence of procedures to avoid contradictions, and on the unifying figure of the lawgiver. The lawgiver is often identified with Solon, but his identity sometimes fades, much as it does in modern codes and legal interpretation, into an abstract figure which guarantees the coherence of the system.³³ This strategy is only sparsely used in the *Against Timocrates*, at the end of which (§211) Diodorus points out that Draco's and Solon's greatest contribution to the greatness of Athens is that they συμφέροντας ἔθηκαν καὶ καλῶς ἔχοντας νόμους. Is it not just therefore that the judges should vote serious punishments τοῖς ὑπεναντίως τιθεῖσιν ἐκείνοις? And elsewhere, at §§103 and 106, Diodorus laments that Timocrates is a lawgiver very much unlike Solon.

In the *Against Leptines* this strategy is exploited fully: at §§13-14 Demosthenes states that the *ethos* of every new law must conform to that of the city, and as the *ethos* of a law reflects that of the man who enacts it, the *ethos* of the man himself must be consistent with that of the city. He illustrates at §§11-12 the *ethos* of the city by narrating an episode, and later at §§102-4 by commenting on some of its oldest laws, those on wills and on defamation, which he attributes to Solon. This *ethos* is then contrasted at §105-8 with those of the Spartans and of the Thebans, which are different and yet consistent within themselves and with their laws and customs. At § 153 again Demosthenes urges the Athenians not to allow a law that is completely at

³² This aspect is key, and Wolff 1970: 45-67 correctly identifies as a distinctive category arguments stressing that the law contradicts general principles extrapolated from other statutes. *Contra* Sundahl 2000, 2009: 493-502 notes that this kind of argument is rare when the *grammateus* reads out an actual law. But the actual reading of the contradictory statute was necessary when the point was a formal contradiction. Contradiction in principles could be discussed on a more general level without the law being read out in full.

³³ The importance of the figure of Solon and 'the lawgiver' as the foundation of the coherence of the laws is stressed by Johnstone 1999: 29. See also Giannadaki, pp. 000-00.

odds with the *ethos* of the city, and whose author seems to be moved by envy and spite, to stay valid. One should also point out that, seen within this framework, the frequent appeals to the intent of the lawgiver (e.g. Hyp. *Athen.* 13-22; Dem. 18.6, 22.8-11, 25, 30, 36.27, 58.11; Lyc. 1.9; Lys. 31.27; Isae. 2.13), which have been extensively studied by other scholars, seem to be less conservative, and have more to do with the preservation and argumentative exploitation of the inner consistency of the laws of the city.³⁴ The laws of the city are coherent among themselves in their provisions and in their spirit and overall aims, as every new legislator has to conform to the *ethos* of the city, which is in turn defined by its laws, most of which were originally enacted by Solon. Thus, Solon's *ethos* and intentions provide reliable guidance in interpreting and enacting laws, as abiding by the correct procedures of *nomothesia* has made sure that the original *ethos* is preserved and reproduced with every new law. The choice of the adjective used to define bad laws in the formal definition of a public charge against a law, ἐπιτήδειος, is of course not casual. According to *LSJ* (s.v. ἐπιτήδειος) the general meaning of this adjective is 'fit or adapted for [something], suitable'. A new law must be fit to be a coherent part of laws of the city, it must be suitable, and accord to their spirit and their purpose.³⁵

Is legal innovation legitimate?

When it comes to legal change and new laws, the Athenians seem to have stuck to an ideology that defined good laws as ones that were enacted following the correct procedures, that is abiding by the prescribed times and giving proposals advance publicity. If these rules were respected, new laws would not be enacted in haste, they would be substantively different from decrees, and most importantly they would contradict neither particular existing laws nor the overall spirit of the laws. Following the correct procedures ensured that the *ethos* of the new laws (and therefore the *ethos* of the proposer) was consistent with the *ethos* of the city and of the existing laws. We have seen however at the beginning of this chapter that sometimes new laws were met with more radical criticism than that described here, and were criticized apparently for the very fact that they were new, that they represented legal change. Such statements suggest that criticism of new legislation could be more conservative, and predicated on the immutability of the laws and on their antiquity. Such a view would make all

³⁴ Thomas 1994: 121-8 argues that such references are evidence of the Athenians' reactionary attitudes to legislation, and that they constitute extra-legal arguments (pp. 130-2; see also Hillgruber 1988: 107-19). On the contrary, as shown by Johnstone 1999: 25-33, they aim to guide legal interpretations of particular laws on the basis of the coherence and rationality of the legal system, predicated on the aims, the *ethos* of the original lawgiver. They provide therefore the orator with the chance to argue for non-literal interpretation of laws, or for interpretations based on principles from different laws (see Wolff 1970: 45-67). Schreiner 1913: 12-60 argued that they were shorthand for the revised code of the last decade of the fifth century, while Ruschenbusch 1966 saw them chiefly as references to the laws of the *axones*. Hansen 1989: 79-80 has shown that this is usually true only for private law, criminal law and more rarely for the administration of justice. He also argues (pp. 80-82) that the audience was meant to believe in the Solonian origin of these laws, but see below pp. 000-00.

³⁵ See also Kremmydas 2012 58-61, Wohl 2010: 293 n. 17.

new legislation fundamentally illegitimate.³⁶ In the last part of this chapter I will therefore try to qualify the statements of Dem. 20.91-2 and 24.142 in the light of the principles I have identified, and finally to highlight significantly different approaches to legal change found in the orators, to show that nothing in the fourth-century Athenian ideology of legislation was fundamentally undemocratic, and the principles it fostered were not antagonistic to those embodied in the *nomothesia* procedure.

Dem. 20.91-2 and 24.142 at first sight seem to be unequivocally conservative and critical of legal change *per se*. Demosthenes at 20.90 discusses the ‘old law’ about legislation, enacted by Solon, which set multiple checks for new laws and made sure that to enact a law one had first to repeal contradictory ones. These checks were put in place so that laws could not be ‘passed haphazardly and go into effect without having been examined’. This ‘old law’ is actually the fourth-century law on *nomothesia*, which is attributed to Solon as many other recent laws are in the orators.³⁷ At §§91-2 Demosthenes goes on to claim that τέως τὸν τρόπον τοῦτον ἐνομοθέτουν, they kept to the existing laws and did not enact others. Demosthenes seems to be unequivocally referring longingly to a time when people followed the correct rules of change and, ironically, as a result did not change the laws at all. But is this what he is actually aiming for? If we keep reading the picture becomes more complicated, yet at the same time more familiar after the previous analysis: at some point powerful politicians conspired to make possible for themselves to pass laws ὅταν τις βούληται καὶ ὃν ἂν τύχῃ τρόπον. As soon as Demosthenes stops painting, as a counterpoint for a present in which bad laws are enacted, a fabulous past in which, allegedly, laws were never changed, the problems with the laws passed by the powerful politicians become recognizable. They do not follow the set times and the correct procedures. And what is the result of this? Again, Demosthenes’ answer is familiar: ‘the number of laws that contradicted each other became so large that you have been for a long time appointing men to correct the contradictions’ (τοσοῦτοι μὲν οἱ ἐναντίοι σφίσιν αὐτοῖς εἰσὶ νόμοι, ὥστε χειροτονεῖθ’ ὑμεῖς τοὺς διαλέξοντας τοὺς ἐναντίους ἐπὶ πάμπολυν ἤδη χρόνον). And moreover ‘the laws do not differ at all from decrees’ (§92, ψηφισμάτων δ’ οὐδ’ ὅτιοῦν διαφέρουσιν οἱ νόμοι). So, despite the exaggerated picture of a past completely antithetical to the present, what Demosthenes is accusing present politicians of doing is not of passing laws at all, but of passing them without following the correct times and procedures, with the result that they enact contradictory laws that do not respect the key requirement of being general permanent rules, and that therefore resemble decrees. Demosthenes paints an extreme counterpoint to current practices in order to stress how negative current practices are, not to propose that the Athenians should not legislate at all.

At Dem. 24.139-42 we find a similar argument. Diodorus recalls the laws of the Locrians, which allow a citizen to propose a new law only with a noose around his neck. If the law is accepted, the proposer walks away, but if not, the noose is drawn tight.³⁸ As a result, Diodorus says, ‘they do not dare to pass new laws, but strictly adhere to the long established laws’ (καὶ γὰρ τοὶ καινοὺς μὲν οὐ τολμῶσι τίθεσθαι, τοῖς δὲ πάλαι κειμένοις ἀκριβῶς χρῶνται). Only once a citizen dared to pass a law, confident that his case was so fair that he could not lose. Again, this

³⁶ This view is expressed most prominently by Thomas 1994, particularly pp. 128-30; see also Wohl 2012: 292-301. The passages discussed below are taken at face value also by Kahrstedt 1938: 12-18; Harrison 1955: 26-35; Ehrenberg 1960: 57.

³⁷ See Hansen 1979-80: 88-95, Rhodes 1984: 56, Canevaro 2013b: 241.

³⁸ Polyb. 12.16 attributes this law to Zaleucus.

statement seems to suggest that a desirable situation is one in which no new laws are ever passed, yet once again this example is a polemical counterpoint to current practices by bad legislators, rather than a positive proposition of how the city should administer itself. First of all, the example given comes from outside Athens, and Demosthenes himself (20.105-11), explains that the customs and laws of other cities can be good, but are suited to the characters and constitutions of the other cities, and cannot be uncritically transferred elsewhere. It is interesting to reconstruct what the argument of Leptines might have been in that context: according to Demosthenes' account, he argued that in other well-administered cities like Sparta nobody is ever granted honours, whereas in Athens the honours are excessive and sometimes individuals who do not deserve it are beneficiaries of *ateleia*. The extreme case of *poleis* where no honours are allowed is used to make the point not that Athens should grant no honours, but only that it should cancel *ateleia*. Extreme examples are used to show that practices completely opposite to the Athenian ones are possible and successfully followed elsewhere (in time or space), but their actual purpose is hardly ever to suggest that the Athenians should adopt the same extreme practices described. The actual aim of an orator is usually more modest: to cancel one honour, or, in the *Against Timocrates*, to enact laws more carefully and follow the correct procedures.

After the Locrian example, in fact, Diodorus goes on to describe the Athenian situation, and unsurprisingly the fault, once again, of the Athenian *rhetoires* is not simply that ὅσοι μῆνες μικροῦ δέουσι νομοθετεῖν, but that they enact τὰ αὐτοῖς συμφέροντα. They legislate too much, but this is an issue because of the kind of laws they enact, which are not meant to benefit the *polis* and apply to all Athenians alike, but rather to benefit themselves. And as they enact these bad laws for their own profit, they repeal Solon's laws. Yet once again the phrasing is not that simple: the passage does not say that repealing the laws of Solon οὐς οἱ πρόγονοι ἔθεντο is unacceptable without qualification. First, the passage makes clear that the problem is repealing the laws of Solon to replace them with bad laws drafted for the benefit of dishonest *rhetoires*. And second, the laws of Solon are not simply good, they are good because πάλαι δεδοκιμασμένους. The perfect with the adverb πάλαι stresses that their antiquity guarantees their worth because they have been repeatedly tested and have proved their expediency. In Dem. 20 and 24 the references to the antiquity of a law have often this pragmatic justification of their authority: at Dem. 24.24 Diodorus praises the laws about *nomothesia* because they have been in force for a long time, so they have often proven that they are beneficial to the Athenians, and no one would want to criticize them; at Dem. 24.34 the law about repealing contradictory laws before enacting a new one is excellent not simply because it is old, but because it is just and defends the people's interests. And at Dem. 20.118 Demosthenes goes as far as to state that it is the duty of the judges, sanctioned by their oath, to give judgement in accordance with the laws, not those of the Spartans or the Thebans, and not even those of their earliest ancestors, but those those that are valid at the time.

To sum up, even these passages, which have been interpreted as suggesting a more extremely conservative view of legislation, one which altogether questions the legitimacy of legal change, upon closer reading prove to be more nuanced, and certainly not undemocratic. In fact, they show the very same concerns with procedural observance, distinction between *nomoi* and *psephismata* and coherence of the laws that we have observed in the previous section, and that are embodied in the procedure of *nomothesia*. And, moreover, one should keep in mind that these passages are all found in speeches delivered for the purpose of repealing a law recently enacted. It is not surprising that they should indulge in strong arguments against the enactments of

these laws. It is likely that our picture would be significantly different if we could read speeches in defence of a new law, or speeches that actually propose its approval to the *nomothetai*. Regrettably, no such speech is extant. Yet a few passages about enacting new laws in the *Against Leptines*, the *Against Timocrates* and Aeschines' *Against Timarchus* shed some light on Athenian public discourse about legislation, and balance out some of the most conservative statements we have discussed. They suggest that enacting laws is a viable and perfectly acceptable option, that there is nothing fundamentally wrong with it, as long as the correct procedures are followed and the requirements are upheld.

The *Against Timocrates* is completely concerned with showing how illegitimate the enactment of Timocrates' law is, yet even in this context a couple of passages show that enacting laws is not a problem *per se*. At §44 Diodorus discusses a law which contradicts the law of Timocrates and concludes with the apostrophe: 'Timocrates, you should either have not proposed this law or repealed that one, rather than, just to suit your wishes, throw everything into confusion just to suit your wishes' (καίτοι χρὴν σ', ὦ Τιμόκρατες, ἢ τοῦτον μὴ γράφειν ἢ ἐκεῖνον λύειν, οὐχ, ἵν' ὁ βούλει σὺ γένηται, πάντα τὰ πρᾶγματα συνταράξαι). As long as the laws of city are consistent, enacting a new law is a perfectly acceptable option, but doing so without repealing the contradictory laws is not. At §29 Diodorus points out that Timocrates had the *nomothetai* summoned with the excuse of the budget and the Panathenaea, and the object of his blame is the fact that no law was actually introduced about these matters. Once again, legislating is perfectly acceptable, and there is nothing wrong in summoning the *nomothetai*, as long as one legislates on the matters about which they are summoned. More interestingly, at §§144-7 Diodorus allows us to see how Timocrates may have justified his law, and the argument Diodorus foresees he might employ is based on the very same principle that underscores many arguments against new laws: Timocrates will justify his law by quoting and discussing a law that orders that no Athenian must be sent to prison, and φήσειν ἀκόλουθον αὐτῷ τεθηκέναι. The discriminating factor between a good and a bad law, whether the speaker is accusing or defending the law, is its coherence with the laws in force in the city.

The *Against Leptines* is even more instructive about attitudes towards enacting new laws, because it not only argues for repealing the law of Leptines, but also advocates the enactment of a replacement law.³⁹ At the very beginning of the speech (§4) Demosthenes argues that if one believed that Leptines' reasons for enacting his law (the Athenians are often deceived) were justified, then it would also be justified to deprive the people completely of their sovereignty, as the people are often deceived on many matters. The speaker observes that the Athenians would never pass such a law, and should rather pass one that punishes those who deceive the people. The alternative to enacting a bad law is enacting a good one, not refusing to enact any. And at §23 Demosthenes suggests that if Leptines were right and the Athenians really had difficulties in finding enough liturgists, they should reform the system and administer it through *symmorai*, as they do with *eisphora* and trierarchies. Again, the solution to an issue is good legislation, which is evidently an acceptable option. At §88 Demosthenes introduces the topic of the replacement law proposed by him and Phormion. He is careful to show that the law is fair and does not order anything shameful, and then proceeds to show in the next paragraphs that they are proposing it

³⁹ See Canevaro 2016 for a reconstruction of the legal case and the procedure. See Kremmydas 2012: 45-55 for an overview of previous interpretations.

according to the correct procedures, and are contextually repealing the law of Leptines that is contradictory. The new law proposed is defended by appealing to the same principles used to attack the laws of Leptines and Timocrates. The discourse about legislation seems to be consistent with the principles underpinning *nomothesia*, and can be used both against and in favour of a law. At §§100-1 Demosthenes even anticipates that Leptines and his supporters will accuse him of using the replacement law as a ruse, and having in fact no intention to enact it. Apparently accusing somebody of not enacting a new law was in appropriate circumstances a viable argumentative strategy, and Demosthenes counters the accusation by urging his opponents to enact the law themselves, if they are so keen.

In fourth-century Athens, procedures and ideas about legislation matched and reinforced each other, and ultimately legislation was considered to be the remit of the people as much as enacting the decrees in the Assembly or passing judgements in court. As Aeschines states very clearly (1.177-8), the Athenians are responsible for making the best laws, and their laws are good because of how the Athenians comport themselves when enacting them: they take into account the principles of justice and the public good and do not enact them for dishonest profit or enmity.

When the authority of Solon is invoked as the foundation of the laws, this is because his legislative action is the blueprint on which all Athenian legislation is (or should be) modelled, reproduced by the Athenian people every time new legislation is enacted. One of the most interesting pieces of evidence for the Athenian reliance, even in the fourth century, on the authority of the lawgiver rather than on popular sovereignty, Aeschin. 1.5-37,⁴⁰ after a long list of ancient laws, significantly ends with a new law, consistent in spirit and intent with these, and therefore no less authoritative. In this section Aeschines discusses Solonian laws that show how the concern for decency is central to the laws of Athens. At the beginning of the section Aeschines states ‘My belief is that whenever we enact laws, we should be concerned with how to make laws that are good and advantageous for our *politeia*’ (§6, προσήκειν δὲ ἔγωγε νομίζω, ὅταν μὲν νομοθετῶμεν, τοῦθ’ ἡμᾶς σκοπεῖν, ὅπως καλῶς ἔχοντας καὶ συμφέροντας νόμους τῇ πολιτείᾳ θησόμεθα). Before even mentioning Draco and Solon, the author of the laws in Athens is identified as the Athenian people, who should enact good and advantageous laws. And finally, after discussing a series of ancient laws concerned with decency, Aeschines at §§33-4 concludes by mentioning a new law, which gives a different tribe the task of presiding over the platform at each Assembly meeting and policing decorum. He claims that this law was proposed following the observation of Timarchus’ shameless behaviour at the *bema*, and that its provisions, spirit and aims are perfectly consistent with those of the laws of Solon discussed in the previous section. This law, according to Aeschines, deserves a place next to the ancient laws he has just discussed, despite having been indicted through a γραφὴ νόμον μὴ ἐπιτήδειον θεῖναι by Timarchus and other speakers of the same sort (it was in fact retained, as we learn from Aeschin. 3.4).

This passage, like the others mentioned above, is evidence that there is in Athenian public and legal discourse about legislation no prejudice against legal change and the enactment of new statutes. Enacting a new law is always a viable option, as it is well within the prerogatives of the Athenian people. There are however rules. These rules make sure that laws are not passed in haste, without regard for the distinction between *nomoi* and *psephismata*, and most importantly that they do not

⁴⁰ Cf. the discussion of Thomas 1994: 123.

contradict other statutes, and are consistent with the overall aims and *ethos* of the legal system. The ideas about legislation expressed and exploited in the extant speeches against inexpedient laws, as well as in other speeches of the orators, are hardly evidence of undemocratic attitudes to legislation. They form a complex texture of interconnected ideological tenets and argumentative options that manages to reinforce and underpin the relevant procedures, recognizing popular sovereignty while at the same time grounding the internal rationality and coherence of the legal system on the original *ethos* of the ancient lawgiver, which is perpetuated through abiding by the *nomothesia* procedures.

Bibliography

Atkinson, K. M. T. 1939. 'Athenian Legislative Procedure and Revision of Laws', *Bulletin of the John Rylands Library* 23: 107–50.

Banfi, A. 2012. 'Qualche considerazione intorno al controllo di legittimità ad Atene'. In *Symposion 2011. Akten der Gesellschaft für Griechische und Hellenistische Rechtsgeschichte*, edited by B. Legras and G. Thür. Vienna: 49-76.

Canevaro, M. 2012. 'Retorica e diritto nell'Atene di V e IV secolo'. Review of Wohl 2010, *RDE* 2: 439-44.

Canevaro, M. 2013a. *The Documents in the Attic Orators: Laws and Decrees in the Public Speeches of the Demosthenic corpus*. Oxford.

Canevaro, M. 2013b. 'Nomothesia in Classical Athens: What Sources Should We Believe?', *CQ* 63: 1–22.

Canevaro, M. 2015. 'Making and Changing Laws in Ancient Athens'. In *Oxford Handbook of Ancient Greek Law*, edited by E.M. Harris and M. Canevaro, Oxford. Oxford Handbooks Online (<http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199599257.001.0001/oxfordhb-9780199599257-e-4>).

Canevaro, M. 2016. 'The Procedure of Demosthenes' *Against Leptines*: How to Repeal (and Replace) an Existing Law', *JHS* 136: 000-00.

Carey, C. 1996. 'Nomos in Attic Rhetoric and Oratory', *JHS* 116: 33-46.

Ehrenberg, V. 1960. *The Greek State*. Oxford.

Hansen, M. H. 1974. *The Sovereignty of the People's Court in the Fourth Century BC and the Public Action against Unconstitutional Proposals*. Odense.

Hansen, M. H. 1978. 'Nomos and Psephisma in Fourth-Century Athens', *GRBS* 19: 315–30.

Hansen, M. H. 1979. 'Did the Athenian Ecclesia Legislate after 403/2 BC?', *GRBS* 20: 27–53

Hansen, M. H. 1979-80. 'Athenian *Nomothesia* in the Fourth Century B.C. and

- Demosthenes' Speech Against Leptines.' *C&M* 32: 87-104.
- Hansen, M.H. 1985. 'Athenian *Nomothesia*.' *GRBS* 26: 345-371.
- Hansen, M.H. 1987. 'Graphe paranomon Against Psephismata Not Yet Passed by the *Ekklesia*', *C&M* 38: 63-73.
- Hansen, M.H. 1989. 'Solonian Democracy in Fourth-Century Athens', *C&M* 40: 71-99.
- Harris, E.M. 2006. *Democracy and the Rule of Law in Classical Athens: Essays on Law, Society, and Politics*. Cambridge and New York.
- Harris, E.M. 2008. *Demosthenes. Speeches 20-22*. Austin, TX.
- Harris, E.M. 2013. *Rule of Law in Action in Democratic Athens*. Oxford.
- Harrison, A.R.W. 1955. 'Law-Making at Athens at the end of the fifth century B.C.', *JHS* 75: 26-35.
- Hedrick, C. W. 2000. 'For anyone who wishes to see', *AncW* 31: 127-135.
- Hillgruber, M. 1988. *Die zehnte Rede des Lysias. Einleitung, Text und Kommentar mit einem Anhang über die Gesetzesinterpretationen bei den attischen Rednern*. Berlin.
- Johnstone, S. 1999. *Disputes and Democracy: The Consequences of Litigation in Ancient Athens*. Austin, TX.
- Kahrstedt, U. 1938. 'Die Nomotheten und die Legislative in Athen', *Klio* 31: 1-25.
- Kremmydas, C. 2012. *A Commentary on Demosthenes' Against Leptines*. Oxford.
- Lambert, S. 2012. *Inscribed Athenian Laws and Decrees 352/1-322/1 BC*. Leiden.
- Lanni, A. 2006. *Law and Justice in the Courts of Classical Athens*. Cambridge.
- Lanni, A. 2009. 'Judicial Review and the Athenian Constitution'. In *Démocratie Athénienne – Démocratie Moderne: Tradition et Influences*, edited by M.H. Hansen. Genève: 235-276.
- Lieberman, R. C. 2002. 'Ideas, Institutions, and Political Order: Explaining Political Change', *American Political Science Review* 96/4: 697-712.
- MacDowell, D.M. (1975). 'Law-Making at Athens in the Fourth Century B.C.', *JHS* 95: 62-7.
- MacDowell, D. M. 2009. *Demosthenes the Orator*. Oxford.
- Piérart, M. 2000. 'Qui étaient les nomothètes à l'époque de Démosthène?'. In *La codification des lois dans l'antiquité*, edited by E. Levy, Paris: 229-256.
- Quaß, F. 1971. *Nomos und Psephisma. Untersuchung zum griechischen Staatsrecht*.

München.

Rhodes, P. J. 1985. 'Nomothesia in Fourth-Century Athens.' *CQ* 35: 55-60.

Rhodes, P.J. 2003. 'Sessions of *Nomothetai* in Fourth-Century Athens.' *CQ* 53: 124-129.

Rubinstein, L. 2000. *Litigation and Cooperation. Supporting Speakers in the Courts of Classical Athens* (*Historia*. Einzelschriften; Bd. 147). Stuttgart.

Schöll, R. 1886. 'Über attische Gesetzgebung', *SBAW*: 83–139.

Schmidt, V. A. 2008. 'Discursive Institutionalism: The Explanatory Power of Ideas and Discourse', *Annual Review of Political Science* 11: 303-326.

Schmidt, V. A. 2010. 'Taking ideas and discourse seriously: explaining change through discursive institutionalism as the fourth "new institutionalism"', *European Political Science Review* 2/1: 1-25.

Schmidt, V. A. 2011. 'Speaking of change: why discourse is key to the dynamics of policy transformation', *Critical Policy Studies* 5/2: 106-126.

Sicking, J. 2008. 'Indeterminacy in Greek law: statutory gaps and conflicts', in *Symposion 2007: Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, edited by E. Harris and G. Thür. Vienna: 99–112.

Smith, R. M. 2008. 'Historical institutionalism and the study of law'. In *The Oxford Handbook of Law and Politics*, edited K.E. Whittington, R.D. Kelemen, G.A. Caldeira, Oxford: 46-59.

Sundahl, M. 2000. *The Use of Statutes in the Seven Extant Graphe Paranomon and Graphe Nomon Me Epitedeion Theinai Speeches*. Diss. Brown University.

Sundahl, M. (2009). 'The Living Constitution of Ancient Athens: a Comparative Perspective on the Originalism Debate', *The John Marshall Law Review* 42: 463-504.

Thomas, R. 1994. 'Law and Lawgiver in the Athenian Democracy'. In *Ritual, Finance, Politics: Athenian Democratic Accounts Presented to David Lewis*, edited by R. Osborne and S. Hornblower. Oxford: 119– 34.

Wohl, V. 2010. *Laws Cosmos. Juridical Discourse in Athenian Forensic Oratory*. Cambridge.

Wolff, H. J. 1970. 'Normenkontrolle' und Gesetzesbegriff in der athenischen Demokratie. *Untersuchungen zur graphe paranomon* (*Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Phil. Hist. Klasse* 1969). Heidelberg.

Yunis, H. 1988. 'Law, Politics and the *Graphē paranomōn* in Fourth-Century Athens', *GRBS* 29: 361-82.